Neutral Citation Number: [2025] EWCA Civ 21

Case No: CA-2023-002328

IN THE COURT OF APPEAL (CIVIL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2025

Before:

LORD JUSTICE NEWEY
LORD JUSTICE MALES
and
LORD JUSTICE PHILLIPS

- -

Between:

THE KING (ON THE APPLICATION OF SIAN IVORY)	**Claimant**
- and -	
WELWYN HATFIELD BOROUGH COUNCIL	**Defendant**

- -
- -

Toby Vanhegan and Stephanie Lovegrove (instructed by **Duncan Lewis Solicitors**) for the **Claimant**
Riccardo Calzavara and Lois Lane (instructed by **Welwyn Hatfield Borough Council**) for the **Defendant**

Hearing date: 28 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. What is at issue in this case is whether the defendant, Welwyn Hatfield Borough Council ("the Council"), was justified in declining to accept an application under section 183 of the Housing Act 1996 ("the 1996 Act") by the claimant, Ms Sian Ivory. The application was rejected on the ground that it was based on the same facts as a previous application in respect of which the Council had concluded that Ms Ivory was not owed the "main housing duty" under section 193(2) of the 1996 Act because she had become homeless intentionally.

2. From 2007 to 2016, Ms Ivory had a secure tenancy of 21 Holliers Way, Hatfield. On 3 August 2016, however, Ms Ivory was evicted from 21 Holliers Way as a result of rent arrears. During the years that followed, she had accommodation in a YMCA hostel for a short period and, between March and May of 2020, in supported housing at 50 Bishops Rise, Hatfield. Having been evicted again, Ms Ivory approached the Council for assistance, but without success. In a letter dated 18 August 2020, the Council informed Ms Ivory that, while it accepted that she had a priority need, it considered her to be intentionally homeless from 50 Bishops Rise. That decision was confirmed on review, but an appeal to the County Court resulted in the Council being required to carry out a second review. The officer conducting that review upheld the finding of intentional homelessness, but, after Ms Ivory had appealed once more, the Council agreed that there should be a third review.

3. On 26 September 2022, the review officer in respect of that review, Mr David Trewick, sent Ms Ivory a "minded to" letter in which he referred to the possibility of Ms Ivory having become intentionally homeless as a result of her failure to pay rent for 21 Holliers Way. Responding in a letter dated 16 December, Ms Ivory's solicitors, Duncan Lewis, said that Ms Ivory "asserts that this was not a deliberate act, due to her mental health problems at the time, meaning that her actions on this matter were impaired". Duncan Lewis went on:

> "Our Client has made it clear that she was suffering from a mental breakdown, severe depression and anxiety which affected her ability and made it difficult for her to pay the rent arrears. It is evident from various excerpts, some of the medical evidence in her housing file, that our Client had great difficulty in coping with her mental health conditions during the time around 2015. It is noted that our Client could not cope with managing her welfare issues, mental health difficulties and needed support in making rent payments. Given that our Client had lost her employment due to her mental health conditions during 2015, this is indicative and evidences the fact that she was unable to pay her rent due to the aberration of her severe mental health difficulties. Our Client asserts that no such support was provided to her. It is clear that our Client was considered incapable of paying the rent and given no support to do so. As such this cannot be a deliberate act."

Later in their letter, Duncan Lewis said:

> "Our Client's mental health conditions had a debilitating effect on her ability to engage with other people, including the Local Authority, and which make her incapable of managing her affairs or developing alternative ways to deal with difficult situations…. Evidently, for an individual not suffering with our Client's mental health conditions, opening mail or the front door or picking up the telephone to make important phone calls are tasks that may be done with little difficulty. However, in our Client's case she was extremely frightened, stressed, depressed of doing any of those tasks, which is attributable to her mental health conditions."

4. Ms Ivory was informed of the outcome of the third review in a letter dated 27 January 2023. As had been foreshadowed in the "minded to" letter, Mr Trewick explained that he had decided to uphold the decision that Ms Ivory was intentionally homeless and so not owed the main housing duty. He focused on Ms Ivory's departure from 21 Holliers Way rather than 50 Bishops Rise on the basis that the former had been her last settled accommodation. He concluded:

> "You are considered to be intentionally homeless because you failed to make payment of rent, or take other action such as claim for benefits, to ensure that the cost of your housing was paid for. This led to the cessation of occupation of your home, at 21 Holliers Way … when you were evicted for rent arrears."

5. Mr Trewick noted in his letter that Ms Ivory had stated that she suffered from a mental breakdown. He said, however, that he had "received no proof of such a breakdown, and there is evidence which contradicts this claim that a mental health breakdown was the true cause of your arrears". Mr Trewick recorded that it had been claimed that certain letters which had been provided were "more than sufficient evidence to support a finding that [Ms Ivory] suffered a mental breakdown and [was] unable to manage [her] affairs", but he rejected that claim. The letters in question were a letter dated 19 May 2021 from Ms Laura Taylor of East Herts Wellbeing Team and two from the GP practice where Ms Ivory was a patient: a letter dated 21 October 2021 from Dr Sharon Grayeff and a letter dated 29 October 2021 from Dr Lilian Ezekobe. With regard to the letter from Ms Taylor, Mr Trewick rejected the suggestion that it was "medical evidence that supports a statement that [Ms Ivory] suffered from a mental breakdown", commenting that it was "mostly an account of [Ms Ivory's] own statements". In respect of Dr Grayeff's letter, Mr Trewick said:

> "A generous reading is that it was relevant to the extent that it confirmed [Ms Ivory has] a history of drug use, back pain, anxiety, depression, and that low mood was noted from 1989 but nothing more and nothing in the context of an explanation as to why [she was] unable [to] pay [her] rent. It is held up as evidence that [she was] not in a position to manage [her] affairs when it is nothing of the sort."

As for Dr Ezekobe's letter, Mr Trewick found it "more useful" since it "provided answers to direct questions", but he nonetheless did not consider it to be evidence supporting Ms Ivory's claims. He observed:

> "Unfortunately, a doctor writing in a letter 'her mental breakdown…' is not in itself proof of a mental breakdown, and when I have repeatedly asked for evidence of such, none has been provided. I am not required to simply accept that [Ms Ivory's] rent arrears were solely as a result of [her] experiencing a mental breakdown on [the] basis of this letter alone."

6. Mr Trewick further explained that he had himself made enquiries of the GP practice but had been told that Ms Ivory had not given permission for her medical information to be shared with him. He commented that "[i]n all the time that [he had] requested information", Ms Ivory had "not acted proactively and provided the information when [she] could easily have done so". After referring to Ms Ivory's housing file, Mr Trewick said:

> "I have also noted that there is no mention of the issues that are now being presented. I would have expected some reference to the defence now being put forward that you were unable to manage your affairs, although I accept that absence of such a note is not in itself evidence that it wasn't put forward."

7. Mr Trewick concluded that "there is no evidence that [Ms Ivory was] suffering a mental breakdown". He was "not satisfied that [a mental breakdown] has been evidenced and therefore [did] not accept this as fact".

8. Another appeal to the County Court followed, but it was dismissed by Her Honour Judge Bloom on 3 August 2023. It had been argued on Ms Ivory's behalf that Mr Trewick had failed to consider whether her "act or omission was the result of a temporary aberration caused by mental illness or an assessed substance misuse problem". Rejecting that, Judge Bloom said:

> "55. The review procedure is a procedure that enables an applicant to raise relevant issues and challenge decisions that have been made. In this instance there were minded to decisions as well as the original decision. The Appellant and her solicitors have had frequent and multiple opportunities to argue that the deliberate act in this case arose because of aberrations related to illicit substance abuse. They have never suggested that that is the case. To me that is highly relevant in considering whether it was a factor that the Respondent should have addressed.
>
> 56. The reviewing officer is considering those factors that are relevant to his decision. The absence of any argument from the Appellant that she was, in fact, suffering from an aberration due to drug use is highly relevant and, in my view, it undermines the argument of the Appellant. In any event the evidence, in my assessment, comes nowhere near to what would be necessary to suggest to the reviewing officer that he

> was bound to consider whether there was a temporary aberration due to assessed substance use."

9. On 4 September 2023, Duncan Lewis made a fresh application to the Council for housing on Ms Ivory's behalf. The letter explained that "there are several facts which are either new, different or were not properly considered at the time of [Ms Ivory's] previous homelessness application". These were given as follows:

> "1. Our Client is still suffering from her disabilities which affects her ability to work and carry day to day activities, which makes the decision irrational because the Council refused to accept that our Client's conditions had a substantial and long-term adverse effect at the time of the decision.
>
> 2. Our Client has new substantial medical evidence, which was not available at the time of the previous application which demonstrates that she is not intentionally homeless, as assessed by Dr Ewa Okon-Rocha in April 2023 ….
>
> 3. Our Client's medical conditions have deteriorated and worsened since the time of the previous application."

10. Attached to the letter was a report dated 26 April 2023 by Dr Ewa Okon-Rocha, a consultant psychiatrist. Dr Okon-Rocha had been instructed on 24 February and had interviewed Ms Ivory remotely on 14 April over the course of some 100 minutes. Dr Okon-Rocha summarised her conclusions in these terms:

> "2.1. It is my view that Ms. Ivory currently presents with active symptoms of depression, panic disorder, and agoraphobia. She has opiates addiction and is currently stable on methadone maintenance.
>
> 2.2. On the balance of probabilities, Ms. Ivory suffered from severe depressive disorder and panic disorder in late [2015] and 2016.
>
> 2.3. At present, the prognosis of Ms. Ivory achieving full remission remains guarded and depends severely on her social situation and her having ongoing access to secondary psychiatric care.
>
> 2.4. It is my view that in late year of 2015 and in 2016, on the balance of probabilities, Ms. Ivory did not have the capacity to keep her tenancy on account of her mental disorders.
>
> 2.5. I believe, at present, Ms. Ivory has the capacity to keep her tenancy with additional support put in place.

> 2.6. Ms. Ivory struggles to carry out her day-to-day activities due to her compromised mental state.
>
> 2.7. Undoubtedly, both physical and mental health would deteriorate in the event of Ms. Ivory becoming street homeless.
>
> 2.8. I am of the opinion that Ms. Ivory fulfils the criteria of disability within the meaning of the Equality Act 2010."

11. Dr Okon-Rocha gave a detailed account of what Ms Ivory had told her. That included this at paragraph 6.4 of the report:

> "At first, her anxiety escalated and she developed panic attacks around 10 years ago. Ms. Ivory says that at some point in 2015, she could not cope with anything and her life became a burden. Her mood was low. She kept self-harming; she would often bang her head against a wall. She found it difficult to motivate herself to get out of bed, look after herself and the household. She lacked energy and felt physically and mentally drained. She stopped eating properly. Her concentration and processing speed were slow. She said that she was not able to deal with any legal matter and struggled to 'put two sentences together', not to mention to prepare her own defence. She felt hopeless and worthless. Her panic attacks became more frequent. Her GP initiated an antidepressant medication, namely mirtazapine, which she is still taking today. Her mental state did not improve the following year, 2016, and deteriorated further."

12. Later in her report, in paragraph 9.1.5, Dr Okon-Rocha said:

> "The symptoms of depression were described as much more severe in late 2015 and in 2016 whereupon Ms. Ivory's mental state deteriorated to the point she was sent home from work. Her GP stated that at that time 'She could not physically get out of bed or carry out any minor activities.' Ms. Ivory said she was not able to 'put two sentences together'. She struggled cognitively and had difficulty processing any given information. In contrast, now, Ms. Ivory reports feeling a bit better as compared to the time around 2015/2016, mainly, thanks to having a temporary shelter."

13. Having received the new application, Mr Trewick promptly asked MEWA, through which Dr Okon-Rocha's evidence had been provided, for the answers to various questions. He said this in an email of 5 September 2023:

> "Judgements are made on Ms Ivory's ability to manage a tenancy, however it is not clear what has been taken into account when making such statements, and other evidence

(which may or may not have been presented to Dr Ewa Okon-Rocha) is for the most part not referenced.

I provide my questions below:

- Has Ms Ivory been examined in person? The document states that Ms Ivory was interviewed remotely, however the solicitor has stated in an email on 5 September 2023 (attached) that Dr Ewa Okon-Rocha examined the client in person.

- If so, when and where did the examination occur?

- The statement is made at 2.2; *'On the balance of probabilities, Ms. Ivory suffered from severe depressive disorder and panic disorder in late 2915 [sic] and 2016'.*

- On what basis was this statement made? If additional evidence other than Ms Ivory's own statement was taken into account to make this finding, please advise what this evidence is.

- The statement is made at 2.4; *'It is my view that in late year of 2015 and in 2016, on the balance of probabilities, Ms. Ivory did not have the capacity to keep her tenancy on account of her mental disorders'.*

- On what basis was this statement made? If additional evidence other than Ms Ivory's own statement was taken into account to make this finding, please advise what this evidence is.

- Reference is made to a court hearing in July 2016; and at 9.4.1 it is stated *'I understand that during the court hearing of 6 July 2016, the Judge commented that Ms. Ivory presented as "chaotic, depressed, and bewildered the situation had got out of control. She was behaving erratically'.*

- How was this provided to Dr Okon-Rocha? Were the relevant documents provided, or was this information provided anecdotally by Ms Ivory or other parties?

It is not clear how Dr Okon-Rocha is able to make a clinical determination about an individual's ability to manage a tenancy 7-8 years ago. Any information which will help to understand the findings made would be appreciated."

14. When MEWA responded that Dr Okon-Rocha would make an additional charge for the extra work, Mr Trewick requested Duncan Lewis to confirm that Dr Okon-Rocha would clarify her report by responding to his queries. When Duncan Lewis sought to

give answers themselves, Mr Trewick made clear that "the questions are for Dr Ewa Okon-Rocha to answer" and said that he "await[ed] the information from Dr Ewa Okon-Rocha in order to make a decision on whether a new application is accepted". On 8 September 2023, however, Duncan Lewis told Mr Trewick in an email:

> "The expert was publicly funded to examine the client and produce the report provided to you. If you wish for Dr Ewa Okon-Rocha to answer your questions, you will need to instruct the expert again and pay the costs for their extra work."

15. In a letter dated 25 September 2023, Mr Trewick informed Ms Ivory that the Council had decided that it did not have to accept her new application, explaining that it was "based on exactly the same facts as the earlier application". Mr Trewick rejected the argument that Dr Okon-Rocha's report was to be treated as a new fact. In that connection, he said:

> "There is nothing of substance provided in the report other than an opinion expressed by someone who after speaking to you believes your version of events. This is an opinion given 8 years after the fact. They did not meet you at the time, did not have any information informing them that was not already considered, and was not provided with any of the opposing views that had formed the previous decision.
>
> … There is no evidence at all supporting the statement that you had a mental breakdown and that this was the cause of your eviction. I have found that the reason that there is no evidence is that it did not happen. I have considered the information in your medical file, and it contains no evidence of a mental breakdown.
>
> I have asked the report author to clarify the basis for their findings, but they have declined to do so. When asked by your representatives to assist with obtaining further information from the report author, they declined to do so.
>
> When asked why a report was commissioned in March/April 2023 but not presented as part of the appeal process in the months leading up to August 2023, no response was given.
>
> Having considered everything provided, I am not satisfied there are any new facts, but a repeat of the submissions made during the review period, only this time from a different person. I have addressed those submissions in the review process, there is nothing new here."

16. On 29 September 2023, Ms Ivory issued a claim for judicial review of the Council's decision to reject her application. On 6 October, Mr Dan Kolinsky KC, sitting as a Deputy High Court Judge, made an order on the papers refusing permission to apply for judicial review. Ms Ivory renewed her application to an oral hearing, but on 21 November Ms Anneli Howard KC, sitting as a Deputy High Court Judge, also refused

permission to apply for judicial review. The core of her reasoning is to be found in paragraphs 11 and 12 of her judgment, in which she said:

> "11. In this case, I accept the arguments of counsel for the defendant, Mr Calzavara, that when you in fact carry out a close examination of the original decision and the fresh application, the council was provided with extensive arguments about the claimant's mental health and was presented with medical evidence from the GP. The intervening fact was not an independent fact, it was just simply the provision of a new expert report repeating the same points.
>
> 12. I conclude that the irrationality threshold is not met because the requirements set down by the House of Lords in [*Rikha Begum v Tower Hamlets London Borough Council*] are not satisfied; there is no new development - a party cannot simply rely on the provision of a new expert report restating the same evidence previously advanced to create a rolling basis for a fresh application."

17. Ms Ivory applied for permission to appeal to the Court of Appeal. On 25 April 2024, I granted permission to apply for judicial review, taking the view that the grounds of appeal had a sufficient prospect of success, and decided that the claim should be retained in this Court. What is before us, therefore, is Ms Ivory's application for judicial review rather than, strictly, an appeal from Ms Howard's order.

The statutory framework

18. Homelessness is the subject of Part VII of the 1996 Act, comprising sections 175-218. Section 183 provides for the provisions of Part VII which follow to apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority has reason to believe that the applicant is or may be homeless or threatened with homelessness. By section 184(1), if the authority has reason to believe that an applicant may be homeless or threatened with homelessness, it is required to make such inquiries as are necessary to satisfy itself whether the applicant is eligible for assistance and, if so, whether any, and if so what, duty is owed to him under Part VII. Where an authority arrives at the conclusion that an applicant is homeless, did not become homeless intentionally, is eligible for assistance and has a priority need, it is obliged by section 193(2) to "secure that accommodation is available for occupation by the applicant" unless it refers the application to another authority in accordance with section 198.

19. Section 191 of the 1996 Act explains when a person "becomes homeless intentionally". Section 191(1) provides:

> "A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation

> and which it would have been reasonable for him to continue to occupy."

20. Section 182 of the 1996 Act requires local housing authorities to have regard to guidance issued by the Secretary of State. The *Homelessness Code of Guidance for Local Authorities*, issued by the Secretary of State, says this in paragraph 9.17 about when a person is to be considered to have acted (or failed to act) "deliberately" for the purposes of section 191(1):

> "Generally, an act or omission should not be considered deliberate where, for example:
>
> …
>
> (b) the housing authority has reason to believe the applicant is incapable of managing their affairs, for example, by reason of age, mental illness or disability;
>
> (c) the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance misuse problem …."

Successive applications

21. Between them, sections 183 and 184 of the 1996 Act impose on a local housing authority in apparently unqualified terms an obligation to make inquiries where it has reason to believe that a person who has applied for assistance "may be homeless or threatened with homelessness". An authority may, in consequence, have to make the inquiries to which section 184 refers in relation to successive applications. The fact that the authority has previously rejected an application from the same applicant will not necessarily, or even usually, excuse it from that duty.

22. The House of Lords addressed this issue in *R v Harrow London Borough Council, Ex p. Fahia* [1998] 1 WLR 1396 ("*Fahia*"). The legislation relevant to that decision was the Housing Act 1985 rather than the 1996 Act, but section 62(1) of the former was to similar effect as sections 183 and 184 of the latter. Lord Browne-Wilkinson, with whom Lords Mustill, Nolan, Clyde and Hutton agreed, identified the problem in these terms at 1401:

> "When a local authority, having discharged their statutory duties in relation to one application for accommodation, then receive a second application from the same applicant, are they bound in all circumstances to go through the whole statutory inquiry procedure and provide interim accommodation or is there a 'threshold test' which the second application must satisfy if it is to be treated as an application under the Act? So, in the present case, Harrow having discharged their statutory duty in relation to Mrs. Fahia's application in 1994, could they decide as they purported to do that there was no fresh application before them in 1995 thereby avoiding the necessity

> to go through the full statutory inquiries required by section 62 and to provide interim accommodation under section 63?"

23. Lord Browne-Wilkinson explained at 1402 that it was Harrow's case that "a person making a second application must demonstrate a change of circumstances which might lead to the second application being successful and it is for the local authority to decide whether that test has been satisfied". Lord Browne-Wilkinson did not accept the submission, however. He said at 1402:

> "I have sympathy with Harrow's case on this point but I am unable to extract from the statutory language any sufficient justification for the suggested short cut. Under section 62 the statutory duty to make inquiries arises if (a) a person applies for accommodation and (b) 'the authority have reason to believe that he may be homeless or threatened with homelessness.' It is established that requirement (a) is not satisfied if an application purports to be made by someone who lacks the capacity to do so: *Reg. v. Tower Hamlets London Borough Council, Ex parte Ferdous Begum* [1993] A.C. 509. Moreover when an applicant has been given temporary accommodation under section 63 and is then found to be intentionally homeless, he cannot then make a further application based on exactly the same facts as his earlier application: see *Delahaye v. Oswestry Borough Council*, The Times, 29 July 1980. But those are very special cases when it is possible to say that there is no application before the local authority and therefore the mandatory duty imposed by section 62 has not arisen. But in the present case there is no doubt that when Mrs. Fahia made her further application for accommodation she was threatened with homelessness. Moreover in my judgment her application could not be treated as identical with the earlier 1994 application. She was relying on her eviction from the guest house which, for one year, she had been occupying as the direct licensee of the guest house proprietor, paying the rent for that accommodation. She was reimbursed the amount of the rent by way of housing benefit but the fact was that she had occupied premises as licensee for a year. It is impossible to say that there has been no relevant change in circumstances at all.
>
> In the circumstances, I agree with the judge and the Court of Appeal that there was no short cut available to Harrow by way of so-called 'non-statutory' inquiries. It may well be that legislation is required to lay down a streamline procedure for processing second or later applications from the same applicant. But the wording of section 62 is too clear to allow the development of such a procedure by judicial decision."

24. In *Rikha Begum v Tower Hamlets London Borough Council* [2005] EWCA Civ 340, [2005] 1 WLR 2103 ("*Rikha Begum*"), the Court of Appeal considered the implications of *Fahia* in the context of the 1996 Act. Neuberger LJ, with whom Keene LJ agreed, considered that "the reasoning in *Fahia* … in relation to the 1985

Act is equally applicable to the 1996 Act": see paragraph 48. In the light of that reasoning, Neuberger LJ endorsed the "notion that a purported subsequent application would be an application for the purposes of section 183, unless it was based on precisely the same facts as an earlier application when that earlier application was finally disposed of": see paragraph 53. Neuberger LJ noted in paragraph 53 that such an approach "could be said to involve a non-statutory inquiry with some concomitant delay", but said that "that inquiry would simply involve a comparison of the subsequent purported application with the already established facts applicable at the time the earlier application was disposed of" and so "it would be a simple inquiry, and any consequent delay would, at least normally, be very slight".

25. It was argued in *Rikha Begum* that "the reasoning in *Fahia* leads to the conclusion that the reference date of comparison must be the date upon which the earlier application was made, and the circumstances at that date must be assessed by reference to the facts revealed in the document by which that application was made": see paragraph 42. Rejecting that, Neuberger LJ said in paragraph 43 that, "on receiving a subsequent purported application, an authority should compare the circumstances revealed by that application with the circumstances as they were known to the authority to have been at the date of the authority's decision (or their review, if there was one) on the earlier application, in order to determine whether the subsequent application is 'no application'". In paragraph 43, Neuberger LJ said:

> "The good sense of taking the circumstances as they were known to be when the earlier application was disposed of, as opposed to the circumstances as revealed in the earlier application document, is self-evident. Further, it seems to me that it is not a misuse of language to judge the circumstances or 'facts [of an] application' by reference to the actual facts when the earlier application concerned was determined (or reviewed), rather than the facts as they were alleged by the applicant on the date he or she made that application."

26. Neuberger LJ explained in paragraph 58 that he thought that "it may be helpful to give some guidance as to the approach housing authorities should adopt to subsequent applications under Part VII of the 1996 Act". In the paragraphs which followed, Neuberger LJ said this:

> "59. First, it seems to me that it is for an applicant to identify, in the subsequent application, the facts which are said to render that application different from the earlier application. If the authority are to assess the question of whether the circumstances of the two applications are 'exactly the same' by reference to the facts revealed by the document by which the subsequent one is made, then that, I think, must be the logical, indeed the inevitable, consequence. Accordingly, if no new facts are revealed in that document (or any document accompanying it or referred to in it), the authority may, indeed at least normally should, reject it as incompetent.

> 60. Secondly, if the subsequent application document purports to reveal new facts which are, to the authority's knowledge, and without further investigation, not new, fanciful, or trivial then the same conclusion applies. The facts may not be new because they were known to, and taken into account by, the authority when it offered the applicant accommodation to satisfy the earlier application. It is not appropriate to expand upon what may constitute or are fanciful or trivial alleged new facts, because that must inevitably turn on the particular circumstances of the particular case.
>
> 61. Thirdly, I turn to a case where the subsequent application document appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant's purposes on investigation. In such a case, I consider that the authority must treat the subsequent application as a valid application, because that is what it is, in light of the reasoning of the House of Lords in *Fahia* [1998] 1 WLR 1396. In particular, I do not consider that in such a case the authority would be entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid, even where there may be reason to suspect the accuracy of the allegations. Such an investigation would, in my view, fall foul of the manifest disapproval in *Fahia* of non-statutory inquiries. Even if an investigation to decide whether the application is valid is expected to be comparatively short and simple, it seems to me that it would transgress that disapproval, as well as running into the other difficulties I have referred to, based on the wording and structure of Part VII of the 1996 Act ."

27. The Court of Appeal returned to the question of what approach should be adopted in relation to successive applications in *R (Minott) v Cambridge City Council* [2022] EWCA Civ 159, [2022] PTSR 786 ("*Minott*"). What was at issue there was whether Cambridge City Council had been wrong to reject a homelessness application by Mr Minott on the basis that it revealed no "new facts".

28. When explaining what had been decided in *Rikha Begum*, Macur LJ said, citing paragraph 46 of Neuberger LJ's judgment, that "[t]he comparison was to be made between the facts as had been determined in the previous application or review, and the asserted facts of the new application and any other associated documentation": see paragraph 26. In the next paragraph, Macur LJ observed that "[a] challenge to [a local housing authority] determination that a fresh application reveals no new fact, or that it is fanciful or trivial, can only be made by way of application for judicial review and

upon public law grounds in the High Court". In paragraph 40, Macur LJ reiterated that a local housing authority "is not entitled to investigate the accuracy of the new facts, however 'short and simple' that investigation may be" and went on:

> "In light of the reasoning in *Fahia* it seems to me that unless the new fact is patently fanciful or trivial on the face of the application, for example as my Lords suggested in discussion with counsel, the application being made on a different day of the week or by a different method, then the [local housing authority] have no choice but to accept the application and investigate it."

29. For his part, Lewison LJ, having quoted from *Fahia*, said in paragraph 70:

> "It will be seen that the only case in which a housing authority can refuse to entertain what purports to be a subsequent application is where there is 'no application'. That would be the position where it is based on 'exactly the same facts' as the previous application or is 'identical with' it. Lord Browne-Wilkinson's reference to 'relevant change in circumstances' must be read in that light; and in view of his rejection of Harrow's argument cannot be read as meaning a change of circumstances which 'might' or 'could' lead to a different outcome."

30. In paragraph 75, Lewison LJ said the following in relation to paragraph 60 of Neuberger LJ's judgment in *Rikha Begum*:

> "It is important to read these words in context. What the authority is doing is looking at the facts alleged by the subsequent application. It is only in that context that it is possible to make sense of the word 'fanciful'. If, for example, Mr Minott had alleged that his home in Cambridge had been destroyed by a meteorite, a local authority would be entitled to regard that as a fanciful allegation. Whether a fact is or is not trivial is perhaps open to debate; but a fact cannot be regarded as trivial merely because it could not affect the outcome of the second application."

31. Lewison LJ went on in paragraph 76:

> "when the housing authority receives what purports to be a subsequent application, their inquiry falls into two quite separate stages:
>
> (i) **Stage 1**: is it an application at all? The answer will only be 'no' if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts).
>
> (ii) **Stage 2**: if it is an application, is it well founded? That will require the housing authority to carry out the inquiries required

> by section 184. If an application passes stage 1, there is no available short cut."

32. In paragraph 91, Lewison LJ said that whether or not Mr Minott's application amounted to a fresh application "depends on comparing the facts as found by Cambridge in the original review decision, with the facts alleged in the fresh application". Approaching matters on that basis, Lewison LJ said in paragraph 96 that, "given that Cambridge had rejected Mr Minott's claim to have had a local connection on the sole ground that he had not accrued six months' residence in Cambridge (with the result that the gateway was shut), an allegation that he had now accrued six months' residence was a new fact (with the consequence that, if the asserted fact is true, the gateway to a local connection with Cambridge was now open)".

33. The third member of the Court, Underhill LJ, said this in paragraph 99:

> "The dispositive reasoning of Macur and Lewison LJJ is as I understand it the same, and I agree with it. Stripping it to its essentials:
>
> (1) Cambridge was only entitled to reject Mr Minott's application if it was identical to his previous application in the sense established by the decision of the House of Lords in *R v Harrow London Borough Council, Ex p Fahia* [1988] 1 WLR 1396 and further explained by Neuberger LJ in *Rikha Begum v Tower Hamlets London Borough Council* [2005] 1 WLR 2103.
>
> (2) That condition was not satisfied in the present case because the new application relied on what was plainly a 'new fact' which was neither fanciful nor trivial, namely that by the date that it was made Mr Minott had been resident in Cambridge for the six-month period referred to at paragraph 10.7 of the *Homelessness Code of Guidance for Local Authorities* (February 2018).
>
> (3) It was not open to Cambridge to rely on the argument that in the particular circumstances of his case (including the unlawfulness of his continued occupation of his interim accommodation) Mr Minott's six-months' residence did not establish that he had a local connection. That is an argument that the change was not 'material', which is precisely what was held in *Fahia* to be inadmissible. The argument could only be run at the next stage."

34. Underhill LJ added in paragraph 101:

> "The only other observation that I would make is that, although I agree that a decision by a local authority that a subsequent application is not a fresh application is only reviewable on public law grounds (as Macur LJ says at para 27 of her

> judgment), it seems to me that typically the issue will be one to which only one answer is possible."

35. Three first instance decisions of relevance to the present appeal were cited in *Minott* without any expression of disapproval: *R (Hoyte) v Lambeth London Borough Council* [2016] EWHC 1665 (Admin), [2016] HLR 35 ("*Hoyte*"), *R (Bukartyk) v Welwyn Hatfield Borough Council* [2019] EWHC 3480 (Admin), [2020] HLR 19 ("*Bukartyk*") and *R (Ibrahim) v Westminster City Council* [2021] EWHC 2616 (Admin), [2022] HLR 13 ("*Ibrahim*"). In *Hoyte*, the claimant had relied in support of an application for assistance on a report from a psychologist in which she had been assessed as "quite a high suicide risk", but the local housing authority had nevertheless concluded that she was not in priority need. The claimant made a further application supported by new medical evidence. The authority rejected the application, but the claimant succeeded in a claim for judicial review of its decision. The authority had argued that "suicidal ideation had been taken into account" in relation to the earlier application and that "therefore the additional evidence presented by the claimant was nothing new but merely 'more of the same'": see paragraph 43. Ms Amanda Yip QC, sitting as a Deputy High Court Judge, disagreed. The decision letter in respect of the previous application had to be read as concluding that there was no significant suicide risk and the authority "must be 'fixed' with the facts being as it found them to be at the time of [that decision] when comparing the facts of the new application": see paragraph 48. "What the defendant cannot do", Ms Yip said in paragraph 49, "is to go back and compare the facts which were alleged (but not accepted) in the previous application with those put forward in the new application". In paragraph 44, Ms Yip had said:

> "In distinguishing, as the defendant does, between the facts behind an application rather than the evidence adduced in support of those facts, it seems to me that this must refer to the facts in the mind of the decision maker at the time of a decision and not merely facts that are asserted but not accepted. Any other approach would be irrational. A person who is presented with evidence but rejects it cannot reasonably say 'I knew that all along' when later presented with fresh evidence of the fact alleged."

36. In *Bukartyk*, the local housing authority had concluded in a review decision that the claimant was not in priority need, explaining that, while she had stated that she had mental health problems, no evidence had been provided. The claimant made a fresh application in support of which she provided medical evidence, but the authority declined to accept it, explaining in a letter dated 9 October 2019 that it was "satisfied that there are no relevant new facts that were not known about at the time we dealt with your previous application, or that any new facts presented are trivial": see paragraph 21. The authority argued that "(a) the additional evidence revealed no more than 'low level' mental health issues; and (b) that such issues had already been known to, or at least suspected by, the defendant at the time of the Review Decision". However, Mr Sam Grodzinski QC, sitting as a Deputy High Court Judge, said:

> "51. I do not accept that submission, for two related reasons. First, as noted above, the whole basis of the Review Decision was that the claimant had failed to produce any evidence to

> support her claim to be suffering from mental health problems, and the defendant concluded that the claimant had 'no medical issues'. The Review Letter did not say that the defendant understood the claimant to be suffering from low level mental health problems but that these were insufficient for her to have a priority need within s.189(1)(c) of the Act .
>
> 52. Second, the 9 October Decision itself neither stated nor implied that the defendant had, in reaching the earlier Review Decision, taken into account that the claimant had mental health problems (low level or otherwise). It is important to recall that, as Neuberger LJ's judgment in *Rikha Begum* explains at [60], what is relevant is whether the facts were 'known to, and taken into account by' the authority on the earlier application. There is nothing in either the Review Decision, or the 9 October Decision, to support that conclusion."

37. In *Ibrahim*, the local housing authority had rejected a homelessness application by the claimant on the basis that she had become intentionally homeless notwithstanding that she had supplied medical evidence to the effect that she could not stay in the flat in question. The claimant made a second application supported by a further psychiatric report, but the report was not put on the housing file and the application was rejected on the footing that there were no new facts. A claim for judicial review was successful. Soole J explained that the authority had failed to address the issue of "subjective reasonableness" (viz. whether it would have been reasonable for the claimant to stay in the flat) in its review decision and said in paragraph 102:

> "the failure to consider that issue is highly material to the question of whether or not the new application is based on identical facts to those which were the subject of the review decision of 28 August 1980. The significance of facts depends on the purpose for which they are considered. True it is that the material before the review officer included Dr Ketteley's report of 6 February 2018 and its statement that the incidents in Middlesbrough '… reminded her so greatly of her original trauma in Congo that she was unable to stay in her flat.' However the review officer did not consider that evidence as it related to the issue of 'subjective reasonableness'. It formed no part of the reasoning and decision; and accordingly should be disregarded when the comparison is made between the original and the 'new' application."

In the next paragraph, Soole J said that "Dr Ketteley's updated report of 11 February 2020 made the point in terms of particular clarity and force".

38. In paragraph 99, Soole J had referred to "the proper concern that the local housing authority must be protected against applicants who seek to secure permanent temporary accommodation by a continuing cycle of repetitious applications supported by additional pieces of evidence". He commented that, "[i]n such cases, the authority would be entitled to reject such applications as abusive".

The issues

39. The issues to which the present claim gives rise can be summarised as follows:

    i) Was Ms Ivory's application of 4 September 2023 based on the same facts as her previous application or did Dr Okon-Rocha's report constitute or include a new fact? ["The New Fact Issue"]

    ii) Was Mr Trewick entitled to inquire as he did into Dr Okon-Rocha's report and, if not, what are the consequences? ["The Inquiries Issue"]

    iii) Should Ms Ivory be refused relief on the basis of abusive conduct? ["The Abuse Issue"]

40. I shall take these in turn.

The New Fact Issue

41. Mr Toby Vanhegan, who appeared for Ms Ivory with Ms Stephanie Lovegrove, submitted that Dr Okon-Rocha's report either constituted or included a new fact. Where a question arises as to whether a new application is based on the same facts as a previous one, Mr Vanhegan said, the facts found in respect of the earlier application have to be compared with those alleged in support of the later application. The first of the two stages identified by Lewison LJ in *Minott*, Mr Vanhegan observed, is supposed to be a "spot the difference" exercise in which only "fanciful allegations" and "trivial facts" fall to be disregarded. Undertaking such an exercise in the present case, Mr Vanhegan argued, it is evident that the application which the Council rejected was not "based on exactly the same facts" as its predecessor. Dr Okon-Rocha's report plugged a gap in the evidence which Mr Trewick had criticised. It provided expert evidence from a consultant psychiatrist and, moreover, was not founded only on materials which Mr Trewick had considered before: Dr Okon-Rocha's assessment was also informed by a 100-minute interview with Ms Ivory.

42. In contrast, Mr Riccardo Calzavara, who appeared for the Council with Ms Lois Lane, denied that Dr Okon-Rocha's report either amounted to or contained a new fact. A report, Mr Calzavara said, cannot itself be a new fact: it is mere packaging. Nor, Mr Calzavara contended, did Dr Okon-Rocha's report include any new fact: the circumstances revealed in it were already well known to the Council. The new application, Mr Calzavara submitted, has to be compared with the *evidence* submitted in support of the previous *application* (not the *facts found* in respect of that latter application).

The basis of comparison

43. It seems to me that when determining whether a new application can be rejected as based on the same facts as a previous one:

    i) The primary concern is with *facts* rather than *evidence*;

    ii) The facts now *alleged* fall to be compared with the facts as they were *found* to be on the earlier application;

iii) Allegations and facts which are trivial or fanciful can, however, be disregarded;

iv) Where the later application simply repeats an earlier, rejected allegation of fact and is not supported by any new evidence of any significance at all, the fact alleged will be a "new fact" but the local housing authority will be entitled to dismiss the allegation as fanciful. To that extent, the question whether there is fresh evidence (and, if so, of what it consists) may be relevant.

44. In the first place, Neuberger LJ said in *Rikha Begum*, at paragraph 60, that a local housing authority should reject an application if "the … application document purports to reveal new facts which are, to the authority's knowledge, and without further investigation, not new, fanciful, or trivial". Commenting on these words in *Minott*, Lewison LJ observed at paragraph 75 that "[w]hat the authority is doing is looking at the facts *alleged* by the subsequent application" (emphasis added), noting that it "is only in that context that it is possible to make sense of the word 'fanciful'". That conclusion is, I think, borne out both by Neuberger LJ's reference to the application document "*purport[ing]* to reveal new facts" (emphasis added) and the disapproval of "non-statutory inquiries". The trivial and fanciful apart, the authority has to work from what is asserted without determining whether a claim is well-founded.

45. Secondly, the cases appear to me to show that the facts with which those now alleged have to be compared are not all those alleged in respect of the earlier application, but those found or accepted. In *Rikha Begum*, Neuberger LJ said at paragraph 53 that the relevant inquiry would "simply involve a comparison of the subsequent purported application with the *already established* facts applicable at the time the earlier application was disposed of" (emphasis added). He also made reference, in paragraph 43, to "the circumstances *as they were known to the authority to have been* at the date of the authority's decision (or their review, if there was one) on the earlier application" and "the *actual facts* when the earlier application concerned was determined (or reviewed)" and, in paragraph 60, to facts "*known to, and taken into account by*, the authority" (emphasis added in each instance). Similarly, in *Minott* Macur LJ spoke of "the facts *as had been determined* in the previous application or review" and Lewison LJ referred to comparing "the facts *as found* … in the original review decision, with the facts alleged in the fresh application" (emphasis added in both places): see paragraphs 26 and 91. Likewise, in *Hoyte* Ms Yip QC denied the relevance of "facts that are asserted but not accepted" and in *Bukartyk* Mr Grodzinski QC relied on the local housing authority having "concluded that the claimant had 'no medical issues'".

46. Thirdly, the authorities are replete with references to the significance of new *facts* and, so far as I can see, nowhere talk of new *evidence* mattering as such. Judges have also spoken of "established", "alleged" and "asserted" facts and of facts being "determined" and "found": see paragraphs 24-26, 28, 30, 32 and 35 above. Such words are obviously apt in relation to the facts which evidence seeks to prove, but are not appropriately used in respect of the evidence itself. It would make no sense to refer to "established", "alleged" or "asserted" evidence or of evidence being "determined" or (in the relevant sense) "found".

47. Fourthly, it is plain from *Rikha Begum* and *Minott* that "fanciful" and "trivial" allegations can be disregarded. In *Rikha Begum*, Neuberger LJ explained at paragraph 60 that a local housing authority may reject an application where the only "new facts" revealed in it are "fanciful, or trivial". In *Minott*, Lewison LJ spoke in paragraph 76 of "disregarding fanciful allegations and trivial facts".

48. Fifthly, it seems to me that a local housing authority will be entitled to reject an allegation which simply replicates one that was made and rejected before and for which no new evidence of any significance at all is now provided. An authority could, in my view, properly deem such an allegation "fanciful". Whether or not the allegation could be considered "fanciful" when made on the earlier occasion, the authority could properly, I think, see it as such when repeated without any additional evidential foundation.

49. Even so, the circumstances in which a local housing authority is entitled to reject a purported new application without undertaking the inquiries for which section 184 of the 1996 Act provides must be very limited. That, however, is not surprising. Sections 183 and 184 of the 1996 Act do not expressly circumscribe the obligation. Moreover, Lewison LJ commented in *Minott*, at paragraph 89, that the trend in the case law "tends to confirm Lord Browne-Wilkinson's prediction in *Fahia* that cases in which a housing authority would be entitled to refuse to entertain a subsequent application would be confined to 'very special cases'".

The present case

50. I do not consider that Dr Okon-Rocha's report of itself represents a new "fact" such as would require the authority to entertain Ms Ivory's new application. As I see it, the report provides evidence of certain facts (in particular, that in 2015-2016 Ms Ivory "did not have the capacity to keep her tenancy on account of her mental disorders"), but does not itself represent a relevant "fact".

51. On the other hand, it seems to me that the report must be considered to contain new facts. Mr Trewick explained in the review decision of 27 January 2023 that he did not accept that Ms Ivory had suffered a mental breakdown. In contrast, Dr Okon-Rocha concluded that Ms Ivory had suffered from mental disorders which meant that she had lacked the capacity to keep her tenancy. When, therefore, the facts alleged in the context of Ms Ivory's new application are compared with those found in the review decision, it is plain that they are not identical.

52. Nor can there be any question of the allegations of mental disorder on which Ms Ivory is relying being disregarded as "fanciful" or "trivial". It is true that, as Mr Trewick pointed out in the review decision, Dr Okon-Rocha had no contact with Ms Ivory until some years after the eviction from 21 Holliers Way. It is also the case that Dr Okon-Rocha drew on materials which Mr Trewick had considered when rejecting Ms Ivory's previous application. The fact remains, however, that the present application is supported by expert evidence from a consultant psychiatrist who, moreover, based her conclusions on a lengthy interview with Ms Ivory as well as pre-existing documentation. While, therefore, this is not the first time that Ms Ivory has claimed to have suffered a mental breakdown, there is fresh evidence which cannot be dismissed as without significance.

53. In *Minott*, Macur LJ noted at paragraph 27 that a "challenge to [a local housing authority] determination that a fresh application reveals no new fact, or that it is fanciful or trivial, can only be made … upon public law grounds in the High Court". In the same case, however, Underhill LJ observed at paragraph 101 that "typically the issue will be one to which only one answer is possible". In the present case, the only possible conclusion is that Ms Ivory's new application was not based on exactly the same facts as its predecessor. In circumstances where Mr Trewick had previously rejected mental breakdown such as was alleged in the new application, the Council was necessarily obliged to entertain the application unless it could be said to be unsupported by any new evidence of any significance at all, and it was not reasonably open to the Council to take that view.

The Inquiries Issue

54. A theme running through the cases is that a local housing authority is not entitled "to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid, even where there may be reason to suspect the accuracy of the allegations" (to quote Neuberger LJ in *Rikha Begum*, at paragraph 61). Mr Vanhegan argued that Mr Trewick fell foul of this principle when he sought to inquire into the basis on which Dr Okon-Rocha had arrived at her conclusions. In contrast, Ms Lois Lane, who presented this part of the Council's case, submitted that the questions which Mr Trewick asked were directed at discovering whether Dr Okon-Rocha's report could be said to be new, not whether her views were well-founded. In the event, Ms Lane said, Mr Trewick concluded that the report represented repackaging of old material.

55. In my view, Mr Trewick was not entitled to proceed as he did. He had to consider whether there was a "new fact" by reference to what was said in Dr Okon-Rocha's report. Had he obtained answers to the questions he asked in his email of 5 September 2023, they might have been relevant to what was termed "Stage 2" by Lewison LJ in *Minott*. However, the questions were not appropriate at "Stage 1", and neither any responses nor the absence of one could be relevant to whether there was a "new fact".

56. In the event, there can be no question of Mr Trewick having erroneously taken account of any answer to his queries since none was given. Mr Trewick does, however, appear to have had regard to the absence of responses. As mentioned in paragraph 15 above, Mr Trewick stated in his letter of 25 September 2023:

> "I have asked the report author to clarify the basis for their findings, but they have declined to do so. When asked by your representatives to assist with obtaining further information from the report author, they declined to do so."

57. In the circumstances, it seems to me that Mr Trewick had regard to an irrelevant consideration when making his decision.

The Abuse Issue

58. Mr Calzavara submitted that Ms Ivory should be denied any relief even if Dr Okon-Rocha's report constituted or contained a "new fact". The report, Mr Calzavara said, had been obtained through legal aid for the purposes of the appeal which was

subsequently dismissed by Judge Bloom on 3 August 2023 yet Ms Ivory had neither sought to adduce the report in those proceedings nor even disclosed its existence until after the appeal had been dismissed. The combination of failing to reveal the report while the appeal was pending and then relying on it to support a further application amounted, Mr Calzavara argued, to improper conduct, and the Court should in consequence decline to grant Ms Ivory any relief.

59. I would not myself exclude the possibility that there might be circumstances in which it would be open to the Court to refuse to quash the rejection of a repeat application on the basis of improper conduct. I do not, however, consider that Ms Ivory should be refused relief on that ground.

60. In a witness statement dated 9 October 2023, Mr Amandeep Bains, who was then a trainee solicitor with Duncan Lewis, explained that Dr Okon-Rocha's report had not been served in the appeal "because it was irrelevant to the appeal as it post-dated the review decision dated 27 January 2023", the appeal "was only concerned with the facts and law as at the date of the review" and new evidence "is not usually permitted in homelessness appeals … and not usually permitted in appeals generally …". Mr Calzavara cited *Bubb v Wandsworth London Borough Council* [2011] EWCA Civ 1285, [2012] PTSR 1011 to show that it is not the case that there can never be scope for adducing evidence during the course of an appeal. In *Bubb*, however, Lord Neuberger noted at paragraph 24 that "judicial review involves a judge reviewing a decision, not making it" and said in paragraph 25 that "[i]n the overwhelming majority of judicial review cases, even where the issue is whether a finding of fact should be quashed … , there should be no question of live witnesses" and "[e]ven the provision of further documentary evidence which was not before the original decision-maker must often be questionable". Lord Neuberger went on to say that "nothing in these observations is intended to cut down the flexible and practical approach to section 204 appeals adopted by the county court", but the decision hardly lends encouragement to any idea that Ms Ivory should have been seeking to adduce Dr Okon-Rocha's report in the appeal which was determined by Judge Bloom. To the contrary, it seems to me that there was very good reason for Mr Bains to consider that the report was irrelevant to the appeal. The decision which was under appeal had to be assessed by reference to the circumstances as they were when it was made, and Dr Okon-Rocha's report was not even in existence at that point.

Conclusion

61. In my view, the claim is well-founded. Ms Ivory's application of 4 September 2023 was not based on "exactly the same facts" as the previous one; Mr Trewick was not entitled to take into account, as he appears to have done, the absence of answers to the questions he had asked after receiving the application; and this is not a case in which relief should be denied by reason of abusive conduct. I would accordingly quash the Council's decision to reject the application. The Council must, as it seems to me, make the inquiries for which section 184 of the 1996 Act provides.

62. Decisions in respect of Ms Ivory's application should in future be made by an officer other than Mr Trewick. Having expressed clear views already, Mr Trewick would be placed in an invidious position if he were asked to handle the application.

Lord Justice Males:

Introduction

63. I agree that this claim for judicial review should succeed and that the Council's decision to reject Ms Ivory's application should be quashed. I do so, save in one respect, for the reasons given by Lord Justice Newey.

64. The point on which I would take a different approach concerns the nature of the comparison to be carried out in order to decide whether a new application must be accepted. Lord Justice Newey says that the relevant comparison is between the facts now *alleged* and the facts as they were *found* to be on the earlier application (see [43(ii)] above). In my view the relevant comparison is between the new application and the earlier application. If the two applications are the same, the later application need not be accepted.

65. In some cases the difference between these two approaches will not matter. It does not make any difference to the outcome of the present case. But in some cases it may make a difference and in any event councils need to know what approach they ought to adopt in dealing with successive applications. I shall therefore attempt to explain my reasoning.

The two approaches

66. Before I do so, it is worth illustrating the difference between the two approaches in a case such as the present, where the applicant's essential factual case was rejected by the council on the earlier application. Here, Ms Ivory's essential allegation throughout has been that she suffered a mental breakdown in late 2015 and 2016 which rendered her incapable of managing her affairs and, specifically, left her unable to apply for housing benefit in order to pay her rent at 21 Holliers Way. The result of the first application was that the council did not accept that allegation, with the consequence that she was found to be intentionally homeless as a result of her eviction for non-payment of the rent and the council owed her no housing duty. The later application, with which we are concerned, makes the same allegation, but on this occasion provides independent expert evidence of her mental breakdown, which was previously lacking, in the form of a report from a consultant psychiatrist, Dr Okon-Rocha, who had conducted a lengthy interview with Ms Ivory and reviewed her medical records.

67. If the relevant comparison is between the facts now *alleged* and the facts as they were *found* to be on the earlier application, it is inevitable that the latest application is different. The facts now alleged include that Ms Ivory suffered a mental breakdown in 2015/16, while the facts previously found were that she did not. On this basis, a later application repeating precisely the same facts as were previously rejected, with nothing new, would be a different application. Lord Justice Newey's approach would still lead to the later application being rejected, but that would not be the result of comparing the facts now alleged with those as they were earlier found to be. Rather, it would be by characterising the later application as 'fanciful' because it simply repeats an earlier, rejected allegation without providing any significant new evidence (see [43(iv)] above).

68. This suggests to me that the real comparison is not between the facts now alleged and the facts previously found, with a gloss that in some circumstances a later application

may be rejected as fanciful. Rather, it is a more straightforward comparison between the earlier application and the later application. If (as in this case) the later application is founded on the same allegation as the earlier application, but does provide significant new evidence, I see no reason why it should not be regarded as a new application which the council is required to consider. This approach deals with the mischief that hard pressed housing authorities should not have to deal with repeated applications which contain nothing new, while meeting the needs of vulnerable applicants who may not have got it right first time, but do in fact have potentially valid grounds for seeking housing assistance which ought at least to be considered.

69. Moreover, if (as I understand Lord Justice Newey to accept) significant new evidence may mean that a new application is not identical to an earlier application, I see no reason to draw a bright line distinction between new evidence which asserts additional facts and new evidence which says nothing new but is significant in other ways, for example because of its intrinsic reliability (e.g. contemporary documents) or its source (e.g. an independent expert).

70. As I shall attempt to show, there is nothing in the case law which prevents us from adopting this straightforward approach.

The statutory provisions

71. The starting point must be the terms of sections 183 and 184 of the Housing Act 1996. These provide that when a person applies to a local housing authority for accommodation or assistance in obtaining accommodation and the authority has reason to believe that the person is or may be homeless or threatened with homelessness, the authority 'shall' make such inquiries as are necessary to satisfy themselves whether the person is eligible for assistance and, if so, whether any and if so what duty is owed. Thus it is mandatory, when an application is made, for the local housing authority to make these inquiries. On their face, these provisions do not exclude the possibility of successive applications. They apply to a second application unless there is some reason to conclude either that the second application should not count as an application at all or that it can be disregarded by reference to some other principle (such as that it is abusive in some way) which is extraneous to the statutory provisions.

The case law

Fahia

72. The approach adopted by the House of Lords in *R v Harrow London Borough Council, ex parte Fahia* [1998] 1 WLR 1396 was to treat a second application based on exactly the same facts as the earlier application as no application at all:

> '… when an applicant has been given temporary accommodation under section 63 and is then found to be intentionally homeless, he cannot then make a further application based on exactly the same facts as his earlier application: see *Delahaye v Oswestry Borough Council*, The Times, 29 July 1980. But those are very special cases when it is possible to say that there is no application before the local

> authority and therefore the mandatory duty imposed by section 62 has not arisen. But in the present case there is no doubt that when Mrs Fahia made her further application for accommodation she was threatened with homelessness. Moreover in my judgment her application could not be treated as identical with the Elliott 1994 application. … It is impossible to say that there has been no relevant change in circumstances at all.'

73. The House of Lords was there concerned with the provisions of the Housing Act 1985, but for present purposes these are materially the same as those of the 1996 Act.

74. I would note three points about this decision. First, the actual issue in the case was whether a person making a second application 'must demonstrate a change of circumstances which might lead to the second application being successful and it is for the local authority to decide whether that test has been satisfied'. The House of Lords rejected this approach. That meant that it was unnecessary to decide precisely in what circumstances a second application could be rejected or precisely what was meant by 'based on exactly the same facts'. Second, the decision supports the view that the relevant comparison is between the earlier application and the later application ('the application could not be treated as identical with the earlier 1994 application'). There is no suggestion that the relevant comparison is between the facts as found on the earlier application and the facts alleged in the later application. That possibility was not considered. Third, in order for the later application to be treated as no application at all there had to be a very close identity between the two ('based on exactly the same facts … identical'). That makes sense in the context of homelessness applications by vulnerable applicants. If a later application is not a mere repetition of what was said before, a strong justification would be needed to say that a local authority need not accept it as an application.

Rikha Begum

75. This topic was further considered in *Rikha Begum v Tower Hamlets London Borough Council* [2005] EWCA Civ 340, [2005] 1 WLR 2103. The issue in the case was whether an applicant making a second application had to show a material change of circumstances since the earlier application. The Court of Appeal held that she did not. It was enough that the second application was 'a genuine application' not based on precisely the same facts as the earlier application: there were two factors which were not identical with or on the same facts as the first application, and the second application was therefore valid. In this context Lord Justice Neuberger observed that:

> '39. … The only relevant basis upon which a purported subsequent application may be treated as no application, according to *Fahia* at p. 1402, appears to be where it is based on "exactly the same facts as [the] earlier application".'

76. As in *Fahia*, this goes a long way to suggesting that the relevant comparison is between the two applications, but once again there was no suggestion that the relevant comparison should be between the facts as found on the earlier application and the facts alleged in the later application.

77. However, there was a different issue, which was whether the comparison should be confined to 'the facts revealed in the document by which [the earlier] application was made' or whether (as the court held) account could also be taken of 'the circumstances as they were known to be when the earlier application was disposed of, as opposed to the circumstances as revealed in the earlier application document'. The significance of this point was that after the date of the earlier application but before that application had been finally determined, the applicant had a second child. She sought to rely on this as a new fact when she made her second application. But she faced the problem that the birth of the second child had already been taken into account when the earlier application was finally disposed of. In order to overcome this problem, she argued that the relevant comparison was between the new application and the earlier application as it had initially been made. The court rejected that argument, holding that the relevant date for comparison was the date when the earlier application was disposed of. Accordingly the birth of the second child could not be relied on in the later application as a new fact.

78. This was the context for Lord Justice Neuberger's conclusion that:

> '46. Accordingly, in order to check whether a subsequent purported application is based on "exactly the same facts" as an earlier application, the authority must compare the circumstances as they were at the time when the earlier application was disposed of (i.e. when it was decided when the decision was reviewed) with those revealed in the document by which the subsequent application is made (and any other associated documentation).'

79. This does not mean that when facts are alleged in the earlier application but not accepted by the council (or by the county court on appeal), the relevant comparison is with the facts ultimately accepted by the council. That point did not arise and there is no indication that the Court of Appeal had it in mind. Lord Justice Neuberger's further reference to 'the already established facts applicable at the time the earlier application was disposed of' must be seen in the context which I have explained.

80. Lord Justice Neuberger went on to give 'guidance as to the approach housing authorities should adopt to subsequent applications under Part VII of the 1996 Act', while recognising that 'any such guidance must be of a general nature, because each application must be dealt with on its own particular merits':

> '59. First, it seems to me that it is for an applicant to identify, in the subsequent application, the facts which are said to render that application different from the earlier application. If the authority are to assess the question of whether the circumstances of the two applications are "exactly the same" by reference to the facts revealed by the document by which the subsequent one is made, then that, I think, must be the logical, indeed the inevitable, consequence. Accordingly, if no new facts are revealed in that document (or any document accompanying it or referred to in it), the authority may, indeed, at least normally, should, reject it as incompetent.

> 60. Secondly, if the subsequent application document purports to reveal new facts, which are, to the authority's knowledge, and without further investigation, not new, fanciful, or trivial, then the same conclusion applies. The facts may not be new because they were known to, and taken into account by, the authority when it offered the applicant accommodation to satisfy the earlier application. It is not appropriate to expand upon what may constitute or are fanciful or trivial alleged new facts, because that must inevitably turn on the particular circumstances of the particular case.
>
> 61. Thirdly, I turn to a case where the subsequent application document appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant's purposes on investigation. In such a case, I consider that the authority must treat the subsequent application as a valid application, because that is what it is, in light of the reasoning of the House of Lords in *Fahia*. In particular, I do not consider that, in such a case, the authority would be entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid, even where there may be reason to suspect the accuracy of the allegations. Such an investigation would, in my view, fall foul of the manifest disapproval in *Fahia* of non-statutory inquiries. Even if an investigation to decide whether the application is valid is expected to be comparatively short and simple, it seems to me that it would transgress that disapproval, as well as running into the other difficulties I have referred to, based on the wording and structure of Part VII of the 1996 Act.'

81. Overall, there is nothing in *Rikha Begum* to suggest that the relevant comparison is anything other than a comparison of the two applications, while treating the earlier application as not limited to what was said in the initial application but including all matters on which the applicant relied and which the local authority took into account by the time that application came to be determined.

82. Further, it is the substance of the two applications which has to be compared. The addition of new facts which are merely fanciful or trivial will not mean that a later application is different from an earlier application. I note that this appears to be the origin of the concept of fanciful or trivial facts in this context. What Lord Justice Neuberger was saying was that fanciful or trivial facts or allegations can be left out of account, not that an identical later application can be ignored because it is fanciful, which is a slightly different point.

Hoyte

83. In *R (Hoyte) v Southwark London Borough Council* [2016] EWHC 1665 (Admin), [2016] HLR 35, the applicant made two applications for housing assistance relying on her mental health problems, including (on the second occasion) evidence from a

clinical psychologist that she was 'quite a high suicide risk'. However, the local authority obtained its own evidence and concluded that the applicant did not have a priority need because she was no more vulnerable than an ordinary person and her GP's records did not disclose any risk of suicide. As a result her applications were rejected. The applicant then attempted to commit suicide, emptying her bank account and taking a bus to Blackfriars Bridge. On the way, she received a telephone call from her GP and was persuaded to go to the surgery instead, where she was examined by a doctor who recorded that she had clear suicidal ideation. This was confirmed on the following day when the applicant saw a mental health nurse.

84. She then made a further application for housing assistance, including evidence from her GP and the mental health nurse, but this was rejected on the ground that there had been no material change in her circumstances since the earlier decision that she did not have a priority need. Somewhat disingenuously, it was said that the applicant's history of suicidal ideation was already known to the local authority. An application for judicial review succeeded. Ms Amanda Yip QC, sitting as a Deputy High Court judge, held that 'A person who is presented with evidence but rejects it cannot reasonably say "I knew that all along" when later presented with fresh evidence of the fact alleged':

> '49. What the defendant cannot do, in my judgement, is to go back and compare the facts which were alleged (but not accepted) in the previous application with those put forward in the new application. To do so is irrational for the reasons I have spelt out above. …
>
> 51. I can see that there may be an objection to the drip feeding of evidence said to support the same facts originally alleged. However, that was not the case here. There was a new development in the form of events of 24 February and those events resulted in new evidence from those responsible for the claimant's primary health care. That evidence meant that the claimed new facts could be realistically asserted. …
>
> 52. In my judgement, it cannot be said that the events of 24 February and the accounts from the GP and [mental health nurse] were simply new evidence of an existing situation nor were they matters that could be described as "trivial or fanciful". On any reasonable interpretation, when tested against the facts as the defendant had found them to be at the time of the review, the new application could not be considered by any reasonable authority to be based on "exactly the same" facts. …
>
> 54. I therefore come to the conclusion that it was irrational or unreasonable in the *Wednesbury* sense for the defendant to take the view that the circumstances when the claimant made application on 1 March 2016 were exactly the same as those which led to the earlier decision that she was not in priority need and so to reject the new application.'

85. I accept that this decision, which is obviously correct, provides some support for saying that the relevant comparison is between the facts previously found and those now alleged. But this reasoning is not binding on us and the decision is equally explicable on the basis that the applicant's actual attempt to commit suicide constituted a significant new fact so that the new application was not based on exactly the same facts as the previous applications.

Bukartyk

86. The applicant in *R (Bukartyk) v Welwyn Hatfield Borough Council* [2019] EWHC 3480 (Admin), [2020] HLR 19 had made earlier applications in which she insisted that she did not have mental health issues despite some suggestion that she had been evicted from her previous accommodation because of inappropriate behaviour which had caused some concerns about her mental health. The local authority concluded that in the absence of any evidence of mental health issues, there was nothing to support the contention that the applicant had a priority need and therefore rejected her application. She then made a new application, supported by a letter from a psychiatrist saying that she was suffering from recurrent suicidal thoughts, in which she did claim to be in priority need as a result of her mental health. The local authority refused to accept the claim on the ground that the facts now presented were the same as those previously known.

87. Mr Sam Grodzinski QC, sitting as a Deputy High Court Judge, held that a claim for judicial review succeeded:

> '43. Thus on the face of the 9 October Decision, it is in my judgment very difficult to see how the defendant could rationally conclude that the new medical evidence disclosed no new facts, or could regard such facts as trivial or fanciful. On its face, the evidence showed that Dr Okoye, a Speciality Doctor in Psychiatry, considered the claimant to be suffering from "intense emotional liability"; and that she had "some traits of an emotionally unstable personality disorder". … Likewise Dr Watson, an Adult Community Mental Health Service doctor, considered the claimant to be experiencing an adjustment disorder following her eviction, and that she presented with "traits of an emotionally unstable personality disorder".'

88. The deputy judge said that the local authority could not say that it had been aware of concerns about the applicant's mental health when rejecting the previous application as the whole basis of its earlier decision had been that there was no evidence about that. He referred to Lord Justice Neuberger's statement in *Rikha Begum* at [60] that what is relevant is whether the facts were 'known to, and taken into account by' the authority on the previous application.

89. In my judgment this case represents a straightforward comparison between the earlier and the later application. The earlier application did not rely on the applicant's mental health; the later one did. The fact that the local authority had been aware of some possible concerns which it had expressly rejected and not taken into account did not affect the analysis.

Ibrahim

90. In *R (Ibrahim) v Westminster City Council* [2021] EWHC 2616 (Admin), [2022] HLR 13, the applicant was a victim of rape and other abuse in her home country, the Democratic Republic of Congo. She applied for asylum in this country and was provided with accommodation in Middlesbrough, where she suffered harassment by a gang of youths and, eventually, the male occupant of a neighbouring flat entered her flat by the bedroom window and went into her bathroom, where she was naked. She left the flat and went to stay in London with a friend. Her application for housing assistance when her friend required her to leave was supported by a psychiatrist's report which concluded that she was suffering from post-traumatic stress disorder and severe depression and would not be able to return to Middlesbrough. The local authority rejected her application on the basis that she had made herself intentionally homeless from the flat in Middlesbrough. She made a second application, in the course of which she obtained a further report from the psychiatrist, saying that it was obvious in view of her history of trauma that she could not have remained in the Middlesbrough flat, that if she were forced to return there it would increase her risk of suicide, and that 'the option to flee may have been the only option available to her – and may well have been mediated by her stress system rather than it being a cognitive choice'. This new psychiatrist's report was personally delivered to the local authority, but never reached the housing file or the review officer. The local authority then refused to accept this new application on the ground that there had been no change in the facts.

91. Once it came to light that the local authority's review officer had never received the new report, the applicant's solicitors invited the local authority either to withdraw its decision and make a fresh review decision having considered the report or to accept a fresh application. The local authority declined to withdraw its decision and refused to accept a fresh application, again on the ground that there had been no change in the facts.

92. A claim for judicial review succeeded. Among other reasons, Mr Justice Soole held at [103] that the new psychiatrist's report 'made the point in terms of particular clarity and force. Indeed its language goes beyond the terms of the report of 6 February 2018, in that it is clearly expressed as an opinion, in strong terms, linking the triggering of the personal history of trauma so that "she could not have remained in the property in Middlesbrough".' The decision illustrates that the relevant comparison is between the previous application and the later application, with the qualification that a document which was intended to form part of the previous application but which, through no fault of the applicant, never reached the review officer, should not be regarded as having formed part of the previous application. It demonstrates also that the provision of an expert report may itself amount to a new fact for the purpose of this comparison, and that this is so even when the psychiatrist had already provided an earlier report.

Minott

93. The final case to which it is necessary to refer is *R (Minott) v Cambridge City Council* [2022] EWCA Civ, [2022] PTSR 786. The applicant's first application for housing assistance was refused on the basis that the applicant had a local connection with another authority's area but not with the defendant's area. However, the applicant

succeeded in resisting eviction and made a second application on the ground that he had now acquired a local connection with the defendant's area having occupied the temporary accommodation with which he had been provided for more than six months. The defendant refused to accept the second application, taking the view that it was based on exactly the same facts as the earlier application as the simple passing of time and the unlawful occupation of the accommodation could not amount to a new fact.

94. This court held that when a housing authority receives a purported application, there are two stages to be considered. At stage one, the question is whether there is an application at all, and the only case where the answer to that question would be 'no' is where the application is based on exactly the same facts as a previous application or is identical with it, disregarding fanciful allegations and trivial facts. The question whether the application is well founded only arises at stage two, which requires the local authority to carry out the inquiries and merits assessment provided for in the 1996 Act. The defendant council had been wrong in law to go straight to the second stage, considering whether the unlawfulness of the applicant's continuing residence was sufficient to establish a local connection. On the correct approach, there clearly was an application as it relied on what was plainly a new fact, namely that the applicant had now been resident in the defendant's area for a period of over six months.

95. It can be seen from this summary that no question arose as to which of the two approaches which I am considering is correct. That explains, in my view, why there are *dicta* in the judgments which are capable of supporting either approach.

96. Giving the first judgment, Lady Justice Macur referred to what had been said in *Fahia* and *Rikha Begum* and continued:

> '25. Where the fresh application appears to reveal new facts, which are, in light of the information then available to the authority, neither trivial or fanciful, although they may turn out to be inaccurate or insufficient for the applicant's purposes on investigation, the LHA must treat the subsequent application as a valid application. The LHA are not entitled to investigate the accuracy of the alleged new facts before deciding whether to treat the application as valid: see para. 61.
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> 26. The comparison was to be made between the facts as had been determined in the previous application or review, and the asserted facts of the new application and any other associated documentation: see paragraph 46.'

97. The reference to paragraph 46 is a reference to paragraph 46 of Lord Justice Neuberger's judgment in *Rikha Begum* which I have set out at [76] above. As I have explained, Lord Justice Neuberger's statement must be understood in the context of what was in issue in that case.

98. Lord Justice Lewison referred to *Fahia* and *Rikha Begum* and continued:

> '72. That test is harder to satisfy than a test of "material change of circumstances": [41]. The comparison is between the facts found by the housing authority on the first application and the facts asserted in the second application: [44] and [45].'

99. He went on to identify the two stages in the following terms:

> '76. What, however, is clear to my mind is that when the housing authority receives what purports to be a subsequent application, their inquiry falls into two quite separate stages:
>
> i) Stage 1: it is an application at all? The answer will only be "no" if it is based on precisely the same facts as an earlier application (disregarding fanciful allegations and trivial facts);
>
> ii) Stage 2: if it is an application, is it well-founded? That will require the housing authority to carry out the inquiries required by section 184. If an application passes stage 1, there is no available short cut.'

100. However, when he turned to consider on the facts whether the application was a fresh application, he said that:

> '91. The answer to this question depends on comparing the facts as found by Cambridge in the original review decision, with the facts alleged in the fresh application. The legal consequences of the facts alleged in the fresh application are matters for stage 2 rather than stage 1.'

101. Lord Justice Underhill agreed with both judgments and saw no difference in their dispositive reasoning. He said that:

> '99(1) Cambridge was only entitled to reject Mr Minott's application if it was identical to his previous application in the sense established by the decision of the House of Lords in *Fahia* and further explained by Neuberger LJ in *Rikha Begum*'.
>
> (2) That condition was not satisfied in the present case because the new application relied on what was plainly a "new fact" which was neither fanciful nor trivial, namely that by the date that it was made Mr Minott had been resident in Cambridge for the six-month period referred to at para. 10.7 of the Code. …'

102. I accept that this case provides some support for the view that the relevant comparison is between the facts now alleged and the facts as they were found to be on the earlier application. However, that understanding of the case depends on taking a very broad view of what is meant by the same facts. In a broad sense, it could be said that in both applications the applicant was alleging that he had a sufficient local connection to the defendant's area based on a period of six months' residence. That allegation was rejected on the facts on the first application because the local authority did not accept the applicant's case about when he had first resided in the area. More realistically,

however, the application was a different application because the applicant was now contending that he had accrued six months' residence by the date of his second application. In that sense, the applications were obviously different. There were two distinct periods of six months which were in issue in the two applications.

103. In my judgment the *dicta* in this case must also be viewed in the context of the issue in dispute. They did not purport to go further than what had already been decided in *Fahia* and *Rikha Begum* and, as I have explained, those cases were not concerned with the two approaches which I am now considering. Rather, *Fahia* and *Rikha Begum* were concerned to reject a suggestion that there needed to be a material change of circumstances if a second application was to be considered. The issue in *Minott* was whether the local authority had gone beyond a comparison of the applications by making inquiries or relying on matters which only arose at Stage 2.

104. However, the case does contain interesting examples of the kind of fact which can be disregarded as trivial or allegation which can be disregarded as fanciful, which show that these are very narrow categories. Lady Justice Macur said at [40] that in order to disregard a new fact it would have to be 'patently fanciful or trivial on the face of the application' and gave as examples an application made on a different day of the week or by a different method. Lord Justice Lewison at [75] gave as an example of a fanciful allegation a claim that the applicant's home had been destroyed by a meteorite and observed that a fact cannot be regarded as trivial merely because it could not affect the outcome of a second application.

Conclusions

105. It is apparent that the solution which the cases have adopted to the problem of successive applications is to hold that a later application which is identical to an earlier application can be treated as no application at all, so that the obligation to make inquiries contained in sections 183 and 184 of the Housing Act 1996 does not arise. Although in one sense this is the result of interpreting the meaning of the words 'applicant' and 'application' in the legislation, it is essentially judge-made law and, as always, what is said in the cases must be understood in its proper context and not treated as if it had statutory force. It is apparent also that the circumstances in which a later application will be treated as identical to an earlier application are very limited; and that the courts will be astute to prevent the obvious injustice which would arise if a local authority were entitled to refuse to accept an application when presented with compelling new evidence of a fact which it had previously denied.

106. I would therefore summarise the position as follows:

(1) The relevant comparison is between the earlier and the later application. For this purpose the earlier application consists not merely of the initial application, but all matters relied on by the applicant up to the time when the application is finally disposed of.

(2) The later application may only be rejected on the basis that it does not count as an application at all if it is identical to the earlier application or if any new matters are trivial or fanciful.

(3) For this purpose there is no hard and fast line between new facts and new evidence. An application which repeats an earlier, rejected allegation but which is supported by significant new evidence may not be refused.

(4) A local authority will not be permitted to refuse an application on the basis that significant new evidence of a fact which it had previously denied says nothing new. That would be an obvious injustice.

107. It is unnecessary on this appeal to attempt to decide where the line is to be drawn between new evidence which is significant and that which is merely trivial or fanciful. On any view the independent expert evidence of Dr Okon-Rocha was significant. Certainly it was neither trivial nor fanciful. Ms Ivory's previous application had been rejected by the defendant council largely because of what Mr Trewick regarded as the lack of medical evidence. Although the content of Dr Okon-Rocha's report was not very different from what had been asserted on the previous application, the existence of an independent report from an expert consultant psychiatrist, expressing views based on a lengthy interview with Ms Ivory and a review of her medical records, was new. The new application therefore provided significant new evidence which had not been present before. That was sufficient to satisfy the requirement at Stage 1. Whether the evidence was sufficient to refute the suggestion that Ms Ivory was intentionally homeless was a matter for Stage 2.

108. Like Lord Justice Newey, I would not exclude the possibility that there may be some circumstances in which a local authority is entitled to refuse to accept a new application which is not identical to an earlier application on the ground that it is abusive. However those circumstances are likely to be very rare, as the facts of *Minott* demonstrate. This is not such a case.

Lord Justice Phillips:

109. I also agree that this claim for judicial review should succeed for the reasons given by Newey LJ, with the consequences set out in his judgment at paragraphs 61 and 62 above.

110. As for the comparison exercise involved in determining whether a further application is a fresh application which must be admitted, I agree with Males LJ that the facts of the further application should be compared with the facts alleged in the previous application as at the date it was determined. Regarding facts as "new" even though they were previously alleged and rejected would, in my judgment, introduce an artificiality in an exercise which should be straightforward to understand and carry out, and would require a further potentially artificial solution by regarding a "new" previously alleged and rejected fact as "fanciful", even though it may be far from it. I agree with Males LJ, for the reasons he gives, that the authorities do not require us to adopt that approach.

111. I would add that, despite the difference in the routes they take, Newey LJ and Males LJ appear to arrive at the same destination. Put simply, they both recognise that a further application must be accepted if either (i) it is based on a factual assertion which has not previously been made and which is not trivial or fanciful; or (ii) it adduces significant fresh evidence in support of a previously made factual assertion,

whether or not rejected. That appears to be an appropriately straightforward test for a housing authority to apply.